

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Consideration of Adoption	)	
of the PURPA §111(d)(13) Fossil Fuel	)	
Generation Efficiency Standard as Required by	)	Case No. EO-2006-0495
§1251 of the Energy Policy Act of 2005.	)	

**STAFF’S RESPONSE TO COMMISSION’S DECEMBER 26, 2006 ORDER**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and respectfully states as follows:

1. A threshold question in this proceeding is whether or not, under the Energy Policy Act of 2005 (“EPAAct 2005”), prior state action exempts the Commission from having to consider and determine whether to adopt the Fossil Fuel Generation Efficiency Standard, which was added to the Public Utility Regulatory Policies Act of 1978 (“PURPA”) standards by EPAAct 2005. If the Commission decides that the prior state action exemption applies, under the federal law it need not pursue the matter any further. Instead, the Commission may simply issue an order to that effect and close the case.

2. On December 26, 2006, the Commission issued an Order directing any party wishing to file an additional pleading on the applicability of the prior state action exemption to the Fossil Fuel Generation Efficiency Standard, to do so by February 9, 2007. An analogous order was issued in each of the other four cases ---Case Nos. EO-2006-0493, EO-2006-0494, EO-2006-0496 and EO-2006-0497---established to address the other newly created PURPA standards.

3. The exemption language is set forth in 16 USC §2622(d), which provides: “Prior State Actions – Subsections (b) and (c) of this section shall not apply to the standards established

by paragraphs (11) through (13) of section 2621(d) in this title in the case of any electric utility in a State if, before August 8, 2005-

(1) the State has implemented for such utility the standard concerned (or a comparable standard);

(2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility; or

(3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.”

4. 16 U.S.C. §2621(d)(13) describes the Fossil Fuel Generation Efficiency Standard as follows:

FOSSIL FUEL GENERATION EFFICIENCY - Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.

5. Chapter 22 of the Commission’s rules governs the electric utility resource planning process. In particular, Commission rule 4 CSR 240-22.040 governs “Supply-Side Resource Analysis.” Section 1 of the rule states in pertinent part:

The analysis of supply-side resources shall begin with the identification of a variety of potential supply-side resource options which the utility can reasonably expect to develop and implement solely through its own resources or for which it will be a major participant. These options include new plants using existing generation technologies; new plants using new generation technologies; life extension and refurbishment at existing generating plants; enhancement of the emission controls at existing or new generating plants; purchased power from utility sources, cogenerators or independent power producers; efficiency improvements which reduce the utility’s own use of energy; and upgrading of the transmission and distribution systems to reduce power and energy losses. . . .

6. The above-quoted language clearly mandates that Missouri utilities, as part of their electric utility resource planning process, strive to improve the efficiency of their fossil fuel generating plants. A planning horizon of at least 20 years is required. The Commission has thus

considered in a proceeding and implemented a comparable fossil fuel generation efficiency standard. Accordingly, the Staff is of the opinion that the electric utility resource planning process considers the matter of fuel sources, and as such, supports a Commission determination, for purposes of EAct 2005, that the prior state action exemption applies and that the Commission need not consider and determine whether or not to adopt the federal Fuel Sources Standard. The Staff expects, nonetheless, that this issue will be raised along with a host of other issues at such time as the Commission opens a rulemaking concerning the overall electric utility resource planning process (Chapter 22 of the Commission's rules).

**WHEREFORE**, the Staff respectfully recommends that the Commission issue an Order finding that the prior state action exemption of EAct 2005 applies to the Fossil Fuel Generation Standard, and closing this case.

Respectfully submitted,

**/s/ Dennis L. Frey**

Dennis L. Frey  
Senior Counsel  
Missouri Bar No. 44697  
Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
573-751-8700 (telephone)  
573-751-9285 (fax)  
e-mail: [denny.frey@psc.mo.gov](mailto:denny.frey@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed by first-class mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 9th day of February 2007.

**/s/ Dennis L. Frey**